

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

UNITED STATES OF AMERICA,

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v.

SA-12-CR-260-XR

MARY JANE GONZALEZ, ET AL.

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ORDER

On this day came on to be considered the Government's Motion for Order Regarding Application of Payments (dkt. no. 190).

Background

In this eight-defendant case, Mary Jane Gonzalez, Mark Gonzalez, and Johnny Gonzalez (defendant numbers 6, 7 and 8) pled guilty to mail fraud conspiracy. In their January 14, 2013 Judgments these three defendants were ordered to make restitution to the victim (Texas Workforce Commission) in the amount of \$19,591.00. The Judgments further reflected that the Defendants were jointly and severally liable for the \$19,591.00 amount with three other co-defendants (Sylvia Hawkins, Yvonne Rivette and Norma Saenz).

Defendants Hawkins, Rivette and Saenz (defendant numbers 1, 2, and 3) were ordered to make restitution to the victim (Texas Workforce Commission) in the amount of \$61,617.00. These 2013 Judgments further reflected that these Defendants were jointly and severally liable for the \$19,591.00 amount with co-defendants Mary Jane Gonzalez, Mark Gonzalez, and Johnny Gonzalez; \$3,642.00 jointly and severally with Matthew Saenz (defendant number 4); and jointly and severally for \$61,617.00 with defendants Yvonne Rivette and Norma Saenz.

To date, the following Defendants have made the following payments and the following also reflects the accounting done by the Clerk's office:

Clerk's Application of Joint & Several Payments by Defendants as of 06/18/19								
	PAID BY #1	PAID BY #2	PAID BY #3	PAID BY #4	PAID BY #6	PAID BY #7	PAID BY #8	STILL OWED
	18,547.37	17,348.42	1,450.00	3,642.00	1,933.85	5,692.00	5,741.46	
owed by Deft's 1,2,3,4	3,642.00			3,642.00				-
owed by Deft's 1,2,3,6,7,8	19,591.00	2,754.23	2,919.49	489.97	1,993.85	5,692.00	5,741.46	-
owed by Deft's 1,2,3	38,384.00	15,793.44	14,428.93	960.03				
Entire Amount due Victim	61,617.00							7201.6

The following reflects the amounts still owing per the Clerk's office and the Government's accounting:

	Judgment	individual payments made	collective payments made	amount still owing per Clerk	amounts still owing per Govt
Sylvia Hawkins (1)	61617	18547.37	37345.79	7201.9	7201.9
Yvonne Rivette (2)	61617	17348.42	37345.79	7201.9	7201.9
Norma Saenz (3)	61617	1450	37345.79	7201.9	7201.9
Matthew Saenz (4)	3642	3642 n/a		0	0
Defendant 5 charges were dismissed				0	0
Mary Jane Gonzalez (6)	19591	1993.85	13427.31 plus 6,224.30 (credits from payments made by Defts 1,2 and 3) = 19,651.61	0	6163.69
Mark Gonzalez (7)	19591	5692	13427.31 plus 6,224.30 (credits from payments made by Defts 1,2 and 3) = 19,651.61	0	6163.69
Johnny Gonzalez (8)	19591	5741.46	13427.31 plus 6,224.30 (credits from payments made by Defts 1,2 and 3) = 19,651.61	Clerk's office believes Deft 8 has overpaid by \$4,043.54 because at the time he made his payment the \$19591 amount had been substantially paid	6163.69
total amount paid to TWC		54415.1			
amount still owing to TWC		7201.9			

In this pending motion, the Government, relying upon *United States v. Sheets*, 814 F.3d 256 (5th Cir. 2016), argues that the Clerk's office has incorrectly calculated the balances of Defendant numbers 6, 7, and 8 as zero.¹

¹ In the chart above, the Court has totaled all amounts paid by Defendants 1, 2, and 3 to reach the sum of \$37,345.79. The Court totaled all amounts paid by Defendants 6, 7, and 8 to reach the sum of \$13,427.31.

In the plea agreements entered by Mary Jane Gonzalez, Mark Gonzalez, and Johnny Gonzalez (defendant numbers 6, 7 and 8) these defendants and the Government agreed to the following:

The Defendant understands that the Defendant will be ordered to pay restitution in the amount of \$19,591, jointly and severally with the co-defendants; this amount represents the losses to the Texas Workforce Commission resulting from the fraudulent claims made by Johnny Gonzalez, Mary Jane Gonzalez, Mark Gonzalez, and R.J., another individual who has not been charged but who knowingly participated in this scheme with these defendants.

Pursuant to 18 U.S.C.A. § 3664, if “the court finds that more than 1 defendant has contributed to the loss of a victim, the court may make each defendant liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution to the victim's loss and economic circumstances of each defendant.”

The Court did what the Government asked in assessing restitution amounts. The Court apportioned liability to reflect the level of each Defendant's contribution to the victim's loss.

In addition, the Court and Clerk's office did what the Government requested. The Judgments reflected that Defendants 1, 2, and 3 were jointly and severally liable for the \$19,591.00 amount with co-defendants Mary Jane Gonzalez, Mark Gonzalez, and Johnny Gonzalez. Accordingly, when Defendants 1, 2, and 3 made payments, the monies were apportioned to the amounts owing by Defendants 6, 7 and 8.

The Clerk's accounting is correct. The Court, however, recognizes the Government's concern that Defendants 6, 7 and 8 have not truly fulfilled their restitution obligations, but benefit from payments made by Defendants 1, 2 and 3. Further, the Court recognizes the Government's concern that the Clerk's office believes that Defendant 8 is entitled to a \$4,043.54 refund when he had not truly paid his restitution amount and the victim is still owed \$7,201.60.

The Clerk has no authority to refund this overpayment because it was the result of a Treasury Offset initiated by the Financial Litigation Unit of the U.S. Attorney's Office.

The Court concludes that in order to make the victim whole, the \$4,043.54 will not be considered as an overpayment and shall be applied to the remaining restitution amount. Accordingly, the new remaining balances follow:

	amounts still owing
Sylvia Hawkins (1)	3158.36
Yvonne Rivette (2)	3158.36
Norma Saenz (3)	3158.36
Matthew Saenz (4)	0
Deft 5	0
Mary Jane Gonzalez (6)	0
Mark Gonzalez (7)	0
Johnny Gonzalez (8)	0

The Government's motion is granted in part and denied in part as stated above. Going forward the Government should ensure that its proposed language regarding restitution payments

take into account the complexities associated with multiple defendants and potentially multiple victims.

SIGNED this 18th day of June, 2019.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE